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No. 90-967

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

GUY WOODDELL, JR.,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Is a union member who sues his union and its officers for violations of his free speech rights under Title I of the Labor Management Reporting and Disclosure Act entitled to a trial by jury under the Seventh Amendment?

2. Does Section 301 of the Labor Management Relations Act provide the basis for a union member suing his union in federal court for violation of the union Constitution?

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BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

Not surprisingly, the Respondents dispute the Statement of the Case as presented by the Petitioner. The best statement was presented by the Sixth Circuit in its decision, which has the advantage of being neutral.

This is a familial squabble masquerading as a Landrum-Griffin Act case. Because one of the two brothers involved in this fraternal fight is the president of a local union, the local union, IBEW Local 71, and its business manager were touched by the controversy.

This dispute concerns the treatment of Petitioner by the local union and its officers, Business Manager Gregg Sickles and Local President Buck Wooddell. Some background is necessary here to put the case into perspective. Petitioner, Guy Wooddell, is the younger brother of Respondent Buck Wooddell. For some twenty years prior to October of 1985, Buck Wooddell was the Business Manager of Local 71. During that period Petitioner had the opportunity for full employment as a journeyman electrican. In October of 1985, Respondent Buck Wooddell was succeeded in the position of business manager by his son-in-law, Gregg Sickles, who was married to the daughter of Buck Wooddell and niece of Petitioner Wooddell. The business manager of the local union is the chief executive officer who oversees the daily affairs of the local union including the staff, both clerical and assistant business representatives, when they are on the payroll. The president of the local union is not a paid, full-time officer; rather he is an officer whose duties consist primarily of presiding at meetings and appointing officers and committees. It has been held by a member who is working full-time at the trade or, as here, by a retired member.

The trouble between the relatives started in January 1986 when Guy opposed an announced union dues increase. In previous years, Guy had been opposed to the selection of Sickles as the business manager of the local and to the selection of other officers as well. After hearing of Guy's outspoken opposition to the dues increase, Buck telephoned Guy in order to discuss the situation. Guy alleges that Buck told him that if he persisted in what Buck termed his false accusations against him and the union, he would be "finished" in the union. Buck recalls that Guy accused him of bribing an employer representative to rehire Sickles after a discharge and also states that Guy told him that there would be an attorney "living in my [Buck's] house one of these days."

Shortly after this conversation, Buck filed union charges against Guy. Buck maintains that he told the local's recording secretary that these were not formal charges but that he wanted Guy to appear before the local's executive board in order to explain his disagreements with the local. On February 24, 1986, the local sent Guy a notice informing him that he was to appear before the board on March 14, 1986 and that he could bring witnesses and another member to act as his counsel if he so wished. The charges, however, were not formally read at the regular monthly meeting of the board.

On March 14, 1986, Guy, after consulting an attorney, appeared before the board. He came without counsel. At the hearing, the charges were read. Afterward, Guy was asked if he was guilty of the charges. He said no. The two brothers then began shouting at each other, and Guy left. No decision was ever rendered on the charges.

During most of this time, January to March 11, 1986, Guy, for whatever reason, had not registered himself in the hiring hall (referral) book. He signed the referral book Group I on March 11, 1986.

After these incidents, Guy maintains that the local discriminated against him with respect to job referrals. The referral system operated by priority groups. The members were divided into four groups. Group I had the highest priority, meaning that those members would be referred first. In May 1986, Guy was dropped from Group I to Group II. The union contends that this change was made because Guy had not worked the amount of hours over the preceding three years required to stay in Group I.

Before and after being dropped to Group II, Guy was not referred for jobs by the union from the end of January until July. The local's records show that it attempted to reach Guy by phone on July 25, 1986 and on July 28 in order to inform him of a referral. Guy claims

that the local only started to refer him for jobs after he filed his complaint in federal court on July 25. On July 29, Sickles left a message with Guy's wife, but Guy did not return the call. In August 1986, after talking to Sickles, Guy accepted a job but quit after two days, claiming that the job was unsafe. Guy was referred for another job in October 1986. In February 1987, Sickles spoke to Guy's wife about another job, but the local later discovered that Guy had accepted a different job in New Jersey.

On July 25, 1986, Petitioner filed this action. He made essentially six claims: (1) he was deprived of his right to free speech secured under Title I of the Labor Management Reporting and Disclosure Act (LMRDA) because the Respondents retaliated against him for exercising his protected rights; (2) the union breached its contract in violation of § 301 of the Labor Management Relations Act (LMRA) and state law; (3) the Respondents intentionally interfered with his contractual relations in violation of state law; (4) he was deprived of his right to full and fair hearing under LMRA; (5) the union breached its duty of fair representation in violation of § 301; and (6) the Respondents were guilty of the intentional infliction of emotional distress.

The Respondents moved for summary judgment, and, in March 1988, the district court granted summary judgment on the § 301 breach of contract claim and to the individual Respondents on the § 301 fair representation claims. The case was then scheduled for trial in August 1988.

In July 1988, the Respondent again moved for summary judgment on the remaining claims; the trial, meanwhile was continued. In October 1988, after the submission of additional authorities and a response by the Petitioner, the court issued an order granting summary judgment to the Respondents on the rest of the claims.

Upon appeal to the Court of Appeals for the Sixth Circuit, it affirmed in part and reversed in part. In its decision, the court reversed the district court's dismissal of Petitioner's claim that he was deprived of work in retaliation for his outspoken opposition to the dues increase, which was premised upon the LMRDA. The Court of Appeals affirmed the district court's ruling in all other respects. In addition, the Court of Appeals noted that Petitioner was not entitled to a jury trial.

The court further determined that Petitioner had no right to pursue a federal claim under Section 301 of the LMRA for Local 71's alleged violations of the union constitution.

At the same time, the court held that claims brought under union constitutions are exclusively the creatures of federal law. As such, the court determined that pendent state claims may not be a vehicle for resolving such disputes. On September 4, 1990 the Court of Appeals denied Petitioner's Petition for Rehearing.

REASONS FOR DENYING THE WRIT

I. JURY TRIAL DECISION IS DICTA

This Court should not grant certiorari on the jury trial issue. This case has not been tried yet. The Court of Appeals affirmed the dismissal of the case on Summary Judgment in all respects except the LMRDA free speech claim. The Court reversed this claim on the basis of this Court's intervening decision in *Breininger v. Sheet Metal Workers*, 110 S.Ct. 424 (1989).

In the Sixth Circuit the Petitioner raised the issue of his perceived right to a jury trial in LMRDA free speech cases, apparently seeking some guidance for the trial court. In remanding the free speech claim, the Court noted in dicta that he was not entitled to a jury trial (Appendix, A-19-20). The Court, basing its decision on *McCraw v. United Association of Journeymen*, 341 F.2d

705 (6th Cir. 1965), did not thoroughly discuss the issue. It did not refer to this Court's intervening decision in *Teamsters Local 391 v. Terry*, 494 U.S. ——, 110 S.Ct. 1339 (1990), nor did it discuss *Terry*'s impact on LMRDA claims.

All LMRDA free speech claims are fact-specific. This Court would benefit from an analysis of those facts, as applied to the established standards for a jury trial by both the trial court and the Sixth Circuit. It should not rule on this difficult issue on the basis of a record wherein summary judgment was granted.

II. RIGHT TO A JURY TRIAL IN LMRDA ACTION

At issue in this case is the right of a union member, who claims a violation of Title I, Section 101(a)(5), to have his case heard by a jury of his peers. This Court should decline to hear such an issue.

An inquiry into whether a union member alleging a violation of Title I of the LMRDA is entitled to a jury trial should start with this Court's recent decision in *Teamsters Local 391 v. Terry, supra.* There the court held in a plurality opinion that union members, who sued their union under Section 301 claiming a breach of the duty of fair representation and seeking backpay, were entitled to have their cause heard by a jury. Whether or not the Seventh Amendment guarantees a litigant the right to a jury trial turns on whether legal rights and remedies are present. To answer this question, a two-fold analysis has been developed. First, there is a comparison to an action at common law in the courts of eighteenth century England. The first step in the analysis consists of searching for the closest historical analogue to the statutory action. The second steps involves an investigation into the nature of the rights at issue. If legal rights are involved, a jury's participation is required. (The *Terry* plaintiffs

were seeking only damages because the union alone was involved; hence their rights were found to be legal).

The first stage of the court's inquiry led it to conclude that the action was like an action for breach of trust. Justice Marshall concluded that this aspect of the examination remained in equipose between legal and equitable issues. However, when the remedies were looked at, it was clear that the request for back-pay benefits was legal in nature. Accordingly, a jury trial was awarded to the employees.

The *Terry* decision merely extended the court's earlier position on the Seventh Amendment right to a jury trial in statutory claims; see, *Granfinanciera, S.A. v. Nordberg*, 109 S.Ct. 2782, 2790 (1989) and *Curtis v. Loether*, 415 U.S. 189, 194 (1974).

Since *Terry* was handed down, a Circuit Court has ruled that employees in a duty of fair representation case requesting both reinstatement and back-pay, filed against the employer and the union, were entitled to a jury trial, *Brownlee v. Yellow Freight System*, 1990 W.L. 197743 (8th Cir. 1990). No report of *Terry*'s application to the LMRDA was found in any of the circuits.

Petitioner in his brief has stated that there is a split in the circuits over the right to a jury trial in a LMRDA case. The Sixth Circuit in *McCraw v. United Association of Journeymen*, 341 F.2d 705, 709 (6th Cir. 1965) held that there is no right to a jury trial. This decision was followed by the Court of Appeals in the instant case. Petitioner notes that the other three circuits that have considered this issue have disagreed with the Sixth Circuit in *McCraw*. (Petitioner's brief at pp. 21-22). Respondents agree with this statement of the law.

Notwithstanding this agreement on the split in circuits, this is not the opportune time for this Court to consider that issue. The *Terry* decision has refined this Court's earlier decision in *Curtis v. Loether, supra.* There should

be an opportunity for the circuits to apply *Terry* to LMRDA cases so that this Court has the benefit of the analysis of the Circuits. Accordingly, there is no need for the Court to address the issue at this time.

SECTION 301 AND THE UNION CONSTITUTION

The Sixth Circuit below recognized that the claims of discrimination and job referrals stated a cause of action under Title I of the LMRDA, 29 U.S.C. 411, based on the Supreme Court's decision in *Breininger v. Sheet Metal Workers Local 6*, 110 S.Ct. 424 (1989). (Confer Appendix pp. A-8-A-10). Petitioner claims a second jurisdictional basis for this action, namely under Section 301 of the LMRA, 29 U.S.C. 185.

Although acknowledging a split in the circuits on this particular issue, Respondents do not agree that it should be considered at this time by the Court. First, the legislative history of Section 301 indicates that it was not meant to encompass disputes between union members and their unions, but to regulate collective bargaining. *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962); and *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 104 (1962). Secondly, this a garden variety Title I claim that should rise or fall as a Title I claim under LMRDA, rather than on some esoteric 301 theory.

In *Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981), this Court held that a Union Constitution was a contract between a Local and an International Union and that Section 301 conferred jurisdiction to sue the union on this "contract." Section 301 provides in pertinent part for suits by and against a labor organization, as follows:

> "Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act or between any such labor organization may be brought in any district court of the United States having jurisdiction of the parties. . . ."

The Supreme Court in *Plumbers*, acceding to the plain language of the statute, recognized that such a suit could be brought in federal court. This case was a contract suit, literally "between any such labor organizations," 29 U.S.C. 185(a). The court expressly reserved the question of 301 jurisdiction in suits by individuals against their union in a footnote, 452 U.S. at 627 note 16.

This case should not be the vehicle to address this reserved question. Here there is presented a garden variety Title I free speech claim, with a familial overtone. This case should be considered as a Title I claim, not complicated by some possible accretion found in a union Constitution.

Petitioner has argued among other things that a union member's right to maintain a 301 action against his union under its Constitution is a logical extension of *Plumbers*. This Court, in considering statutory construction, is not interested in logical extensions but in the congressional intent. *Steelworkers v. Sadloski*, 457 U.S. 102, 111 (1982).

Did Congress intend Section 301 of the LMRA to provide a statutory basis for a union member to sue his union for any deviation from that Constitution? The purpose of Section 301 was to regulate the union's power in collective bargaining. The plain language of the statute speaks of litigation between an employer and a union or between two unions. No mention is made of individual union members. The answer to the question above is "No."

A closer scrutiny of this question reveals the logical extension is illogical and impractical. Does this Court wish to make a "federal case" of every alleged violation of each local, district council, state council, and international union Constitution? Certainly not. The rights of union members are guaranteed in numerous places in federal law, such as the NLRA and LMRDA. This Court should

not grant 301 status to each and every claim arising under every union Constitution in this country, whether local union or international union.

Perhaps most importantly, the Petitioner's claims of discriminatory job referrals state a cause of action under Title I of the LMRDA, at least since this Court's decision in *Breininger v. Sheet Metal Workers*, 110 S. Ct. 424 (1989). Indeed, the facts in *Breininger* are not dissimilar to the facts in this case, except for the familial touch in this case. Petitioner then has a right to have the district court hear his claims. Since Petitioner already has a statutory basis for this case, there is no need for this Court to take this case to determine whether he has an additional basis.

CONCLUSION

For the foregoing reasons, we respectfully ask this Court to deny the Writ.

Respectfully submitted,

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